



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS Cecil D. Andrus
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

MEMORANDUM

Application Processing No. 40

TO: Water Allocation Staff & Regional Offices

FROM: A. Kenneth Dunn
Director

DATE: January 13, 1987

RE: Interim Approvals for Use of Trust Water

Implementation of the Swan Falls Agreement continues to be delayed pending FERC recognition of the agreement. Processing of applications and reprocessing of undeveloped permits seeking allocation of trust water for consumptive uses will be delayed awaiting FERC review of the agreement or congressional action to cause FERC to recognize the agreement.

For the past two years, IDWR has issued interim approvals to allow projects to proceed using trust water, but water users were required to obtain replacement water from existing storage facilities for release to the Snake River to resolve Idaho Power Company's (IPCo) protest against depletion of flow through its hydropower facilities.

Compliance with the public interest criteria of Sec. 42-203C, Idaho Code, was deferred.

I will continue the interim approval procedure to provide a water supply for persons who can show a sufficient need to divert and use water for the coming season. Interim approvals issued for groundwater diversions within the boundaries of the area described in Water Appropriation Rule 1,5,1,2. (trust water area) will be conditioned to require acquisition of replacement water. Interim approvals outside the boundaries of the area described by Rule 1,5,1,2. will not be conditioned to require acquisition of replacement water. The following procedure is intended to provide information to potential users on the availability of interim approvals, to protect the water rights of other users and to assure compliance with interim approval conditions.

Notice of Interim Approval Procedure

Water Allocation Section will take the following actions prior to January 15, 1987 to inform water users and the general public of the interim approval procedure.

1. Place notices in the Boise, Idaho Falls, Pocatello, and Twin Falls newspapers describing the interim approval process. The notices should be in the form of paid advertisements.

2. Issue press releases to the media.

3. Publicity should stress the risks to the water user and that interim approvals will not be issued for development of federal desert ground under DLE, Carey Act or Reclamation programs.

Processing of Interim Approval Requests

(Assumes that 20,000 acre/year limitation does not apply)

Those interested in receiving an interim approval to use trust water in 1987 should:

1. Inform the department in writing of their intent to divert and use water.
2. Have on file an application or approved permit that accurately describes the proposed diversion and use.
3. If replacement water is required, provide IDWR evidence to demonstrate that storage water has been rented from the Water District 01 rental pool or from some other acceptable source. (2 A-F of storage water for each acre irrigated.) The rental water shall be assigned to the Director of IDWR for replacing reductions in flow of trust water.
4. Pay in advance, the advertising fee if the filing has been previously advertised and needs to be readvertised.

Upon receipt of the above listed information, the regional office will publish legal notice of the filing and the request for interim

approval. The notice shall comply with Rule 4,2,1. of the Water Appropriation Rules and Regulations. If protests are received, a hearing will be scheduled to consider the interim approval and any issues related to 42-203A, Idaho Code.

Approval Conditions

A. The following conditions apply to all interim approvals.

1. Subject to all prior water rights.
2. A measuring device or an access port of a design approved by IDWR shall be installed prior to diverting water under the interim approval.
3. The water user acknowledges that the interim approval does not convey a continuing right to divert water and does not convey any right to divert water except as specifically provided in the interim approval.
4. The water user assumes all risk that he or she will be successful in obtaining a permit for water which may be reallocated under the Water Appropriation Rules and Regulations. The water user accepts all risk that storage water will be available and obtainable from the rental pool in future years to allow the interim approval procedure to continue, if storage water is required.

5. Violation of interim approval conditions, provisions of the Idaho Code, or the Water Allocation Rules and Regulations is cause for cancellation of the interim approval and denial of future requests.

6. By accepting and commencing diversion of water under this interim approval, the water user acknowledges and agrees that the Director of IDWR is authorized to disconnect the power supply from the pump motor used to divert water under the interim approval or to take other reasonable steps to insure that water is not diverted during any period the interim approval is suspended or revoked.

7. The director may impose additional conditions not a part of the original interim approval conditions as determined by the director.

8. The filing on which the interim approval is given may be reprocessed under the provisions of Section 42-203C, Idaho Code, at the request of the water user or as determined by the Director in compliance with pertinent adopted rules and regulations and statutes.

9. Investments made by the water user to divert and use water under the interim approval will not be considered by IDWR when reprocessing the filing under the provisions of 42-203C, Idaho Code.

B. The following additional conditions also apply to interim approvals in the trust water area.

1. The volume of stored water required to be rented from the Upper Snake River Water Supply Bank shall be equal to the volume of water consumptively used as determined by the Director. For irrigation use, the volume shall be two (2) acre feet per acre.

2. Water shall not be diverted unless storage water is available, rented, and on assignment to the Director of IDWR for purposes of replacing reductions of flow in the Snake River.

3. The Director of IDWR will retain jurisdiction of this interim approval to enforce the provisions of the interim approval and to revise the volume of stored water, if appropriate.

4. By accepting and commencing diversion of water under this interim approval, the water user acknowledges and agrees that the Director of IDWR may suspend the interim approval to divert water during any period that the required storage water supply is not available.

Follow-up of Interim Approvals

Water Allocation Section will provide IPCo. a letter listing the names, filing numbers, acreage and stored water amounts for the interim approvals issued and active in 1987. IPCo. shall file a schedule of release of water with the department by November 1st of

each year. IPCo. shall use the accumulated storage water by December 31st or the stored water accumulated will be considered forfeited.

By January 15 each year, Water Allocation Section will mail a notice to each holder of an interim approval within the trust water area of the need to rent stored water or make other arrangements for replacement water for the upcoming water year.

By April 1 each year, Water Allocation Section will mail notice of intent to cancel the interim approval on May 1 for those interim approvals within the trust water area for which evidence of the replacement water acquisition has not been received. On May 1, cancellation notices will be sent when appropriate.

Regional offices will field inspect the place of use for each interim approval the first year it is issued to determine that acreage irrigated is not exceeded. The region will send a memo to Water Allocation Section describing their findings.

When an interim approval is cancelled, the regional office will field inspect to determine if water is or will be diverted. A memo of field inspection findings will be submitted to Water Allocation Section.

Regional offices will document violations and recommend enforcement action. Responsibility for enforcement actions is assigned to Water Allocation Section working through the Legal Staff.